

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Association of County Engineers)	
)	
)	No. 02-0780
)	
)	
Request for Declaratory Ruling Concerning)	
The Underground Facilities Damage)	
Prevention Act (220 ILCS 50))	

MOTION TO CITE ADDITIONAL AUTHORITY OF IACE & TOI

NOW COME the Petitioners, ILLINOIS ASSOCIATION OF COUNTY ENGINEERS and TOWNSHIP OFFICIALS OF ILLINOIS, by and through their attorneys, JUDGE, JAMES & KUJAWA, LLC, and present to the Administrative Law Judge their Motion To Cite Additional Authority regarding statutory construction in the cause herein. Such Motion is as follows:

1. The question before this Court is one of statutory construction involving interpretation of the Illinois Underground Facilities Damage Prevention Act (220 ILCS 50/1 *et seq.*) and the question of whether the Act requires that counties and townships are required to participate in the J.U.L.I.E. State-Wide One-Call Notice System for storm sewers, culverts, field tile or buried electrical lines providing electricity to flashing warning, flashing stop lights or traffic signals.

2. The Illinois Supreme Court has just had occasion to revisit the rules of statutory construction in Illinois in the case of *Krohe v. City of Bloomington*, No. 94112 (2003 WL 1362192 (Ill.)) which determined the meaning of the term “catastrophic injury” in the Public Safety Employee Benefits Act (820 ILCS 320/10 (West 2000)).

3. The questions before this Court involve statutory interpretation of the Underground Utility Facilities Damage Prevention Act in two regards as follows:

- (a) Whether counties and townships falls within the definition of one or more of the following terms under the Act:
 - (1) a public utility; or
 - (2) a municipally owned utility; or
 - (3) a mutually owned utility.
- (b) Whether buried storm sewers, culverts, field tile and/or underground electrical lines for traffic controls are “underground utility facilities” under the Act within the definition of “underground utility facilities” including “wires, ducts, fiber optic cable, conduits, pipes, sewers and cables.”

4. In *Krohe v. City of Bloomington*, No. 94112 (2003 WL 1362192 (Ill.)), a City of Bloomington firefighter obtained a “line-of-duty pension” and he sought insurance benefits for himself and his family pursuant to the Public Safety Employee Benefits Act (820 ILCS 320/10) requiring the City to pay for such benefits if a firefighter “suffers a catastrophic injury or is killed in the line of duty.”

5. The Act, however, did not define “catastrophic injury” and the City contended it meant only “injuries severely limiting the earning power of the employee”; whereas, plaintiff Krohe contended it meant any “line-of-duty disability resulting in a pension.”

6. The Supreme Court in *Krohe* held that because “catastrophic injury” was not defined in the Act, it was ambiguous, possessing several possible different meanings, and, therefore, it was necessary to look outside the statute for the meaning of “catastrophic injury” and the legislative intent was revealed in the remarks of the sponsors of the legislation which remarks stated “catastrophic injury” meant injuries resulting in “a line of duty disability” pension.

7. The *Krohe v. City of Bloomington* case would appear to be helpful to the Court in this case, a judgment-call only this Court can make, because like the Public Safety Employee Benefits Act did not define “catastrophic injury” requiring the Supreme Court to find the meaning ambiguous and it necessary to look for the meaning of “catastrophic injury” outside the Act, the Underground Facilities Damage Prevention Act (220 ILCS 50/1 *et seq.*) does not define a “municipally owned utility” or “mutually owned utility” requiring this Court to look elsewhere for the meanings of such terms.

8. The Supreme Court in *Krohe v. City of Bloomington*, No. 94112 (2003 WL 1362192 (Ill.)) looked to the legislative debates to decipher the meaning of catastrophic injury.

9. That since counties and townships are not named in the Underground Facilities Damage Prevention Act and that since “a municipally owned utility” and “a mutually owned utility” are not defined therein, it is respectfully suggested that the Supreme Court decision in *Krohe v. City of Bloomington* and the Supreme Court cases cited therein suggest that the Illinois Supreme Court would approve determination of the meaning of the terms by reference to the applicable statutes governing municipalities, counties and townships which statutes were cited in IACE and TOI’s Brief on Exceptions as follows:

- (a) Illinois Municipal Code (65 ILCS 5/1-1-1 thru 65 ILCS 105/1);
- (b) Illinois Counties Code (55 ILCS 5/1-1001 thru 55 ILCS 125/11); and
- (c) Illinois Township Code (60 ILCS 1/1-1 thru 60 ILCS 1/305-115).

10. That in order to allow the Court the full opportunity to resolve the issues in this matter and to do so considering the latest Illinois Supreme Court case involving statutory construction somewhat analogous to the statutory construction in this case, the Petitioners,

ILLINOIS ASSOCIATION OF COUNTY ENGINEERS and TOWNSHIP OFFICIALS OF ILLINOIS, respectfully request that this Court grant their Motion To Cite Additional Authority in the cause herein.

Respectfully Submitted,

JUDGE, JAMES & KUJAWA, LLC
JAY S. JUDGE
Attorney for the ILLINOIS ASSOCIATION OF
COUNTY ENGINEERS and TOWNSHIP
OFFICIALS OF ILLINOIS

Appendix: A copy of the *Krohe v. City of Bloomington* case is enclosed herewith.

AFFIDAVIT OF ATTORNEY

I, Jay S. Judge, being duly sworn and under oath, do depose and state that I am a licensed attorney in the State of Illinois and that, were I called upon to give testimony from my own personal knowledge as to the matter set forth in this Petition, the statements herein made are accurate, true and correct.

AFFIANT JAY S. JUDGE
Attorney for the ILLINOIS ASSOCIATION OF
COUNTY ENGINEERS and TOWNSHIP
OFFICIALS OF ILLINOIS

SUBSCRIBED and SWORN TO before me

this 5th day of June, 2003

NOTARY

JAY S. JUDGE — #1373293
JUDGE, JAMES & KUJAWA, LLC

APPENDIX